



0000017407

**ORIGINAL****BEFORE THE ARIZONA CORPORATION COMMISSION**

30SR

**COMMISSIONERS**

JEFF HATCH-MILLER - Chairman  
 WILLIAM A. MUNDELL  
 MARC SPITZER  
 MIKE GLEASON  
 KRISTIN K. MAYES

**RECEIVED**
 Arizona Corporation Commission  
**DOCKETED**

2005 MAR 11 P 3:18

MAR 11 2005

 AZ CORP COMMISSION  
 DOCUMENT CONTROL

DOCKETED BY

IN THE MATTER OF THE GENERIC  
 PROCEEDINGS CONCERNING ELECTRIC  
 RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC  
 SERVICE COMPANY'S REQUEST FOR A  
 VARIANCE OF CERTAIN REQUIREMENTS  
 OF A.A.C. R14-2-1606.

DOCKET NO. E-01345A-01-0822

IN THE MATTER OF THE GENERIC  
 PROCEEDING CONCERNING THE  
 ARIZONA INDEPENDENT SCHEDULING  
 ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC  
 POWER COMPANY'S APPLICATION FOR  
 A VARIANCE OF CERTAIN ELECTRIC  
 COMPETITION RULES COMPLIANCE  
 DATES.

DOCKET NO. E-1933A-02-0069

IN THE MATTER OF THE APPLICATION OF  
 TUCSON ELECTRIC POWER COMPANY  
 FOR APPROVAL OF ITS STANDED COST  
 RECOVERY.

**STAFF'S RESPONSE TO  
 AEPCO'S REQUEST FOR  
 OFFICIAL NOTICE**

Arizona Corporation Commission Staff ("Staff") hereby responds to the Supplemental Filing and Request for Official Notice ("Notice") filed by the Arizona Electric Power Cooperative ("AEPCO") on February 2, 2005. In its Notice, AEPCO claims that this proceeding is moot because the Court of Appeals has invalidated A.A.C. R14-2-1609(C)-(J) ("Rule 1609"), the Commission rule that required the affected utilities to establish the AISA. AEPCO appears to imply that the invalidation of Rule 1609 somehow eliminates the Commission's interest in the status of the AISA. For a number of reasons, Staff disagrees with AEPCO's claims.

1 **I. The invalidation of Rule 1609 does not eliminate the obligation of all affected utilities to**  
2 **support the AISA.**

3 Staff acknowledges that Phelps Dodge Corp. v. Arizona Elec. Power Cooperative, 207 Ariz.  
4 95, 83 P.3d 573 (2004), invalidates Rule 1609(C)-(J), the Commission rule that required the affected  
5 utilities to establish the AISA. But that decision alone does not necessarily eliminate the obligation  
6 of all affected utilities to support the AISA. Both Arizona Public Service Company ("APS") and  
7 Tucson Electric Power Company ("TEP") have existing obligations to support the AISA that are  
8 independent of Rule 1609.<sup>1</sup> Their obligations therefore survive the Phelps Dodge decision. And  
9 while the Phelps Dodge decision invalidated the administrative rule that required the establishment of  
10 the AISA, it did not invalidate the AISA itself.

11 **II. The AISA has been established as an independent entity that cannot be "unwound"**  
12 **without some degree of action by FERC.**

13 By invalidating Rule 1609(C)-(J), the Court of Appeals determined that the Commission did  
14 not have the authority to order the affected utilities to establish the AISA. Phelps Dodge at 112-13,  
15 83 P.3d at 590-91. This conclusion, however, is not necessarily helpful in the current circumstances,  
16 wherein the AISA has already been incorporated, has already established a board of directors to  
17 govern its ongoing operations, and has already received a FERC-approved tariff. Even if the  
18 Commission were to decide to withdraw support for the AISA, it is likely that FERC action may be  
19 required to completely terminate it. That action would likely have to be initiated by the AISA's Board  
20 of Directors.

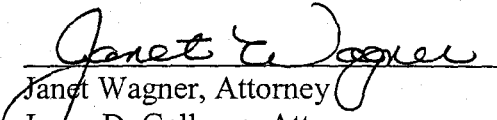
21 To put it another way, the question presented in this proceeding—whether the Commission  
22 should support the continued existence of the AISA—has always been a policy question, rather than a  
23 legal question. And while the Commission may decide to withdraw its support for the AISA, the  
24 Phelps Dodge decision does not compel that result. The Commission is not now precluded from  
25 making the choice to continue to support the AISA. So, the issue in this proceeding—whether to  
26 continue the AISA—is still open and not rendered moot by the Phelps Dodge decision.

27  
28 <sup>1</sup> See Decision No. 61973 at 18, Attachment 1 at 9 (October 6, 1999) (APS); Decision No. 62103 at 22, Attachment No. 1  
at 10-11 (December 29, 1999) (TEP).

1 **III. Conclusion**

2 To summarize, the AISA, in itself, exists independently of A.A.C. R14-2-1609(C) through (J).  
3 In addition, the debate over whether the AISA should continue to exist is still open, and survives the  
4 Phelps Dodge decision. Therefore, Staff does not believe that these proceedings are moot.  
5

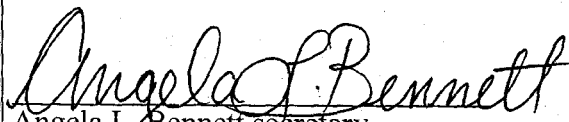
6 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of March 2005.  
7  
8

9  
10   
Janet Wagner, Attorney  
11 Jason D. Gellman, Attorney  
Arizona Corporation Commission  
12 1200 West Washington Street  
Phoenix, Arizona 85007  
13 (602) 542-3402

14 AN ORIGINAL and twenty-one (21)  
15 copies were filed this 11<sup>th</sup> day  
16 of March, 2005 with:

17 Docket Control  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 A copy of the foregoing emailed to  
21 all parties of record this 11<sup>th</sup> day  
22 of March, 2005

23   
24 Angela L. Bennett secretary  
25 to Jason D. Gellman  
26  
27  
28